Supreme Court, U.S.
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No. 03-1515

IN THE

Supreme Court of the United States

CITY OF MCALESTER, *et al.*,

Petitioners,

v.

PITTSBURGH COUNTY RURAL WATER DISTRICT NO. 7, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

AMICUS CURIAE BRIEF OF THE CITY OF KEARNEY, MISSOURI IN SUPPORT OF PETITIONERS

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The City of Kearney, Missouri ("Kearney"), pursuant to S. Ct. Rule 37.2, files this *Amicus Curiae* Brief in Support of the Petition for a Writ of Certiorari of the City of McAlester, Oklahoma ("McAlester") in Case No. 03-1515, *City of McAlester, et al. v. Pittsburgh County Rural Water District No. 7, et al.*

The certiorari petition requests, in essence, that the Court determine if the final judgment of a state administrative body regarding the applicability of 7 U.S.C. § 1926(b) to a proceeding, which judgment can be reviewed by a state court of general jurisdiction, has issue preclusive effect in any subsequent proceedings in federal court. The certiorari petition presents an issue of public concern that arises frequently when cities and associations claiming protection under section 1926(b), such as respondent Pittsburgh Country Rural Water District No. 7 ("Pitt-7"), border one another. The issue is often litigated in annexation and de-annexation or detachment proceedings, and the litigation often occurs in the state system in the first instance. Thus, whether federal courts will give issue preclusive effect to the decisions reached in the state system is of vital interest to many cities.

I. Background

Kearney is a city of approximately 6000 people located in the State of Missouri. As part of its corporate functions, Kearney provides water service to people and businesses that reside within the city limits of Kearney. The city limits of Kearney border on the territory of Public Water Supply District No. 8 of Clay County, Missouri ("PWSD-8"), which claims to be an "association" as that term is used in 7 U.S.C. § 1926 that provides water service to people and businesses within its territory. One of the respondents in this case,

Pitt-7, also claims to be an association under section 1926. Pitt-7's territory borders on that of McAlester, which also provides water service to those within its city limits.

Kearney is currently engaged in litigation against PWSD-8 in which the water district claims rights and protection under 7 U.S.C. § 1926(b). In essence, section 1926(b) provides anti-competitive protection in the market for providing water service to associations that owe money on certain federal loans for the construction of their water distribution facilities. Based on this statute, associations often argue that cities cannot provide water service to any entity located within the corporate limits of the association.

In the appeal to this Court, McAlester, Oklahoma seeks to reverse a decision by the United States Court of Appeals for the Tenth Circuit. The question presented addresses whether state decisions regarding the applicability of 7 U.S.C. § 1926(b) receive issue preclusive effect in federal court. The Tenth Circuit held that, in the particular circumstances presented, federal courts should not give issue preclusive effect to a decision by state administrative body. The determination of this question could have an affect on current or future litigation against Kearney when decisions regarding the applicability of section 1926 are litigated in Missouri circuit courts of general jurisdiction.

II. Discussion

Section 1926(b) provides anti-competitive protection in the market for providing water service to entities located within the association's territory if the association owes money on certain federal loans. The typical scenario in which a section 1926(b) claim or defense arises is when a landowner

or a city seeks to de-annex or detach land from the association or to annex the property into the city. Sufficiently indebted associations routinely argue that the federal statute bars cities from providing water service to entities located within the corporate limits of the association. The argument is that cessation of water service by the water district, no matter how that is accomplished, violates the statutorily granted monopoly because it decreases association revenues. The federal statute provides the alleged monopoly power so the water district can more easily service the federal debt.

Kearney is currently embroiled in several cases in which these issues have arisen. As stated above, Kearney provides water service to people and businesses that reside within the city limits of Kearney. Kearney's city limits border on the territory of PWSD-8, and several individuals have sought to detach from PWSD-8.

Claims made by PWSD-8 against Kearney are currently pending in both federal (the United States Court of Appeals for the Eighth Circuit) and state courts (Clay County, Missouri Circuit Court). Both the federal and state court cases question the propriety of the individual landowners' attempts to detach their property from PWSD-8. The water district alleges that if the Missouri state courts allow the landowners to detach, it would violate the monopoly protection granted by section 1926(b).

The dispute began when the individual landowners filed suits against PWSD-8 in Missouri circuit court seeking detachment. Thereafter, PWSD-8 sued Kearney in federal court alleging that Kearney violated section 1926(b). The federal district court dismissed that suit because it was not ripe unless and until Kearney sought to provide water

service to the water district's territory. PWSD-8 has appealed that decision to the Eighth Circuit. *Public Water Supply District No. 8 of Clay County, Missouri v. City of Kearney, Missouri, et al.*, 8th Cir. Appeal No. 04-2072.

In the meantime, while the federal case was still pending in the district court, PWSD-8 was granted leave to implead Kearney as a third party defendant into one of the state court cases. PWSD-8 has now done so and asserted various claims and defenses based on alleged rights under 7 U.S.C. § 1926(b).

In the appeal to this Court, the question presented addresses whether state decisions regarding the applicability of 7 U.S.C. § 1926(b) receive issue preclusive effect in federal court. The Tenth Circuit held that, in the particular circumstances presented, federal courts should not give issue preclusive effect to a decision by a quasi-judicial administrative body even if the opportunity exists for review by a state court of general jurisdiction. Thus, the resolution of this appeal could have an affect on whether any decision reached by the Missouri circuit court would be binding on a federal court in a subsequent federal proceeding.

While this is an important issue to many cities around the country, not all states utilize the scheme in place in Oklahoma. In Oklahoma, a de-annexation proceeding is commenced by filing a petition with the "board of county commissioners," which makes the determination in the first instance as to whether de-annexation is appropriate and available. *See* Okla. Stat. tit. 82, § 1324.21 (providing that de-annexation proceedings be filed with the board of county commissioners). But in Missouri, a detachment proceeding against an association is brought in a Missouri circuit court

of general jurisdiction, whether that detachment proceeding is brought by an individual landowner or the city itself. *See* Mo. Rev. Stat. §§ 247.031 (suit of individual landowner brought in circuit court) & 247.165 (de-annexation suit of city brought in circuit court). Thus, in reaching its decision, the Court should be aware of the different contexts presented in the various states.

The Eighth Circuit has not ruled on this specific issue, but it has ruled that the Missouri circuit court is an appropriate forum to hear section 1926(b) claims. In *Public Water Supply District No. 10 v. City of Peculiar*, 345 F.3d 570, 573-74 (8th Cir. 2003), the appellate court held that a case filed by the public water district against a city was not ripe because no state court detachment proceeding was pending. The water district argued that it could not raise its section 1926(b) defenses in state circuit court. The appellate court rejected this argument and characterized it as a "preference of forum" only. *Id.* at 573. "We see no reason why the state circuit court cannot or should not hear the District's § 1926(b) claim. It is beyond doubt that state courts can, and often do, exercise jurisdiction over issues of federal law." *Id.* at 574. Whether a federal court is required to give issue preclusive effect to any decision rendered by the state circuit court is of obvious concern to Kearney.

Because the certiorari petition presents an issue of vital public concern that often arises, the City of Kearney, Missouri requests that the Court grant the petition.

Respectfully submitted,

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